

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)
)
 Petition for Extension of the)
 Compliance Date under Section 107)
 of the Communications Assistance)
 for Law Enforcement Act)
)
 Communications Assistance)
 for Law Enforcement Act)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 97-213

FOCAL COMMUNICATIONS CORPORATION
PETITION FOR EXTENSION
AND
COMMENTS

Focal Communications Corporation ("Focal"), by its undersigned counsel, pursuant to Section 107(c) of the Communications Assistance for Law Enforcement Act ("CALEA"), 47 U.S.C. §§ 1001 et seq., hereby requests a two-year extension of CALEA's October 25, 1998 compliance deadline on the grounds that it is impossible for it to comply with the statute within the compliance period because CALEA-compliant equipment will not be available within that period. Focal hereby also submits this request in response to the Commission's April 20, 1998 Public Notice requesting comments on whether and how to grant extensions of CALEA's October 25, 1998 compliance deadline.

I. Focal is Eligible for a Two-Year Extension

Focal, headquartered in Chicago, Illinois, is a competitive local exchange carrier ("CLEC"), with operations in Chicago and New York. Like other telecommunications carriers,¹ Focal is subject to CALEA's wiretapping capability requirements² which, among other things, require carriers to ensure that law enforcement can perform certain electronic surveillance functions by October 25, 1998. Pursuant to Section 107(c) of CALEA, Focal may petition the Commission for an extension of the CALEA compliance deadline for equipment, facilities and services installed or deployed after January 1, 1995. All of Focal's existing network was installed or deployed after January 1, 1995.

CALEA provides that the Commission may grant an extension where "compliance with the assistance capability requirements under section 103 is not reasonably achievable through application of technology available within the compliance period." 47 U.S.C. § 1006 (c)(2). As discussed below, because CALEA-compliant equipment is not currently available for purchase by carriers, Focal will not be able to comply with CALEA's capability requirements by the October 25, 1998 deadline.

¹ Focal is a "telecommunications carrier" as that term is defined in Section 102 (8)(A) of CALEA. A "telecommunications carrier" includes "a person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire. . ." 47 U.S.C. § 1001(8)(A).

² CALEA's capability requirements direct carriers to ensure that their equipment can enable the government unobtrusively to: intercept wire and electronic communications; collect caller identification information; and deliver interceptions and caller identification to the government. 47 U.S.C. § 1002.

II. The Lack of CALEA-Compliant Equipment Prevents Focal From Meeting CALEA's Requirements by The Statutory Deadline

As a threshold matter, Focal strongly supports the efforts of law enforcement agencies to apprehend criminals and to reduce criminal activity. Further, Focal recognizes the critical role that telecommunications carriers play in facilitating electronic surveillance, particularly in the face of rapid changes in technology that may render traditional wiretapping techniques ineffective. Electronic surveillance in the digital era creates complex issues for both law enforcement agencies who perform wiretaps and carriers who facilitate those taps. Focal, like many other carriers aware of their CALEA obligations, continues to struggle with the myriad complicated technical and implementation issues involved in making significant new changes in the network.

As is evident from the filings now pending before the Commission, the Attorney General and the industry have not been able to reach agreement regarding what capabilities must be provided to meet CALEA's requirements. Substantial uncertainty over technical standards persists, despite the fact that the industry has worked closely with the FBI to reach a mutually acceptable view of what capabilities are required for compliance with CALEA, and individual carriers and manufacturers have already devoted enormous financial, technical and personnel resources to meeting their CALEA obligations.

Apparently, the absence of settled standards has caused (and continues to cause) enormous uncertainty thereby making it impossible for manufacturers to produce equipment, and carriers to purchase such equipment, that meets CALEA's requirements. Indeed, Focal's primary vendor, Northern Telecom Limited, has clearly indicated that the equipment required to comply

with all of CALEA's requirements will not be available within the compliance period. CALEA anticipates potential compliance difficulties, such as a lack of available equipment, and thus provides that the Commission may grant an extension if it determines that compliance with the capability requirements is "not reasonably achievable through application of technology available within the compliance period." 47 U.S.C. § 1006 (c)(2). Focal has found that compliance with CALEA's capability requirements is not "reasonably achievable" pursuant to the statute. In fact, compliance is not achievable at all, by the use of existing technology. Equipment built to CALEA specifications is not currently available. Further, Focal understands that, given typical time frames of at least 24 months for developing new equipment, it is not likely that CALEA-compliant equipment will be available by October 25, 1998. A grant of a two-year extension is therefore clearly justified.

III. The Commission Should Extend the Compliance Date for Focal and Other Similarly Situated Carriers

The Commission has requested comment on how it can quickly and efficiently extend the compliance date, if warranted, for large numbers of similarly situated carriers. Although Focal is hereby individually seeking a two-year extension, it strongly supports procedures that would offer some measure of administrative convenience to the Commission while reducing the uncertainty and unnecessary expense for the industry in achieving compliance with CALEA. Focal therefore recommends that the Commission issue an order granting an industry-wide extension of the October 25, 1998 compliance date. No regulatory or public interest purpose would be served by requiring carriers and their vendors to submit individual petitions given that the central issue in each petition is likely to be the same: it is not possible to comply with

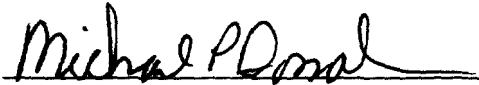
CALEA by the compliance date because CALEA-compliant equipment is not commercially available. Scarce Commission and industry resources would be better spent on resolving the difficult legal and technical issues raised in implementing CALEA.

IV. Conclusion

The simple fact that it is impossible for Focal to comply with CALEA because the appropriate equipment is not commercially available dictates that the Commission should grant an extension of two years. The Commission further should grant a blanket extension for all similarly situated carriers.

Respectfully submitted,

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